Kathryn G. Spelman, Esq. (Cal. Bar No. 154512)
Daniel H. Fingerman, Esq. (Cal. Bar No. 229683)
Mount & Stoelker, P.C.
RiverPark Tower, Suite 1650
333 West San Carlos Street
San Jose CA 95110-2740
Phone: (408) 279-7000
Fax: (408) 998-1473
Email: kspelman@mount.com, dfingerman@mount.com

Counsel for San Francisco Technology Inc.

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U.S. District Court
Northern District of California

San Francisco Technology Inc. Plaintiff vs. Mossworld Enterprises, Inc. Defendant	Case No. CV 10-05574 HRL **Complaint** **Demand For Jury Trial**

MOUNT & STOELKER, P.C.
RIVERPARK TOWER, SUITE 1650
333 WEST SAN CARLOS STREET
SAN JOSE, CALIFORNIA 95110-2740
TELEPHONE (408) 279-7000

MOUNT & STOELKER, P.C.
RIVERPARK TOWER, SUITE 1650
333 WEST SAN CARLOS STREET
SAN JOSE, CALIFORNIA 95110-2740
TELEPHONE (408) 279-7000

Qui tam relator San Francisco Technology Inc. ("SF Tech") files this Complaint against defendant Mossworld Enterprises, Inc. ("Mossworld") and alleges as follows:

Nature of Action

1. This is a *qui tam* action to impose civil fines for false marking. As alleged further below, Mossworld has falsely marked articles in violation of 35 U.S.C. § 292 and must be civilly fined for each offense: "Whoever marks upon, or affixes to, or uses in advertising in connection with any unpatented article, the word 'patent' or any word or number importing that the same is patented, for the purpose of deceiving the public … Shall be fined not more than $500 for every such offense." Mossworld has falsely marked products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Mossworld falsely marked articles with intent to deceive the public.

Parties

2. Plaintiff San Francisco Technology is a California corporation with its principal place of business in San Jose, California.

3. Upon information and belief, Mossworld is a Michigan corporation with its principal place of business at 3365 Auburn Road, Auburn Hills, MI 48326.

Jurisdiction & Venue

4. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a) and 1355(a).

5. Venue is appropriate in this District under 28 U.S.C. §§ 1391(b) and 1395(a).

6. Upon information and belief, this court has personal jurisdiction over Mossworld because Mossworld has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic. Mossworld advertises its products, including its falsely marked products on its web site, at www.snacktrap.com. Mossworld's products are sold at retail store chains which have locations in California and in this District, including Toys R Us and Babies R Us.[1]

[1] http://www.toysrus.com/product/index.jsp?productId=2404578;

Intradistrict Assignment

7. This case is appropriate for District-wide assignment under Civil Local Rule 3-2(c) because the claims in this Complaint arise under 35 U.S.C. § 292, which is codified with the patent statutes.

Mossworld's False Marking

8. SF Tech incorporates by reference all above allegations.

9. Upon information and belief, Mossworld makes and sells many types of products, including the Made For Mom No Spill Bottle Cap System (the "Accused Product").

10. Mossworld causes or contributes to the marking and advertising of products with the U.S. Patent Nos. 5,377,877, 5,339,995, 5,409,144, 5,439,143 and 6,942,121, including, but not limited to, the Accused Product.

11. U.S. Patent Nos. 5,377,877, 5,339,995, 5,409,144, 5,439,143, all entitled "Dispensing valve for packaging", issued on January 3, 1995, August 23, 1994, April 25, 1995, and August 8, 1995, respectively. U.S. Patent No. 6,942,121, entitled "Commercial container drinking adapter for juvenile use and drinking system", issued on September 13, 2005.

12. Mossworld individually marks the Accused Product with U.S. Patent Nos. 5,213,236, 5,377,877, 5,339,995, 5,409,144, 5,439,143, 5,839,614, and 6,942,121.

13. U.S. Patent Nos. 5,377,877, 5,339,995, 5,409,144, 5,439,143 and 6,942,121 are expired patents. Upon information and belief, U.S. Patent Nos. 5,377,877, 5,409,144, and 5,439,143 expired no later than May 26, 2010. Upon information and belief, U.S. Patent No. 5,339,995 expired no later than December 7, 2008. Upon information and belief, U.S. Patent No. 6,942,121 expired no later than September 14, 2009.

14. Mossworld's falsely marked products are being sold in 2010 with such false markings, after the expiration of U.S. Patent Nos. 5,377,877, 5,339,995, 5,409,144, 5,439,143 and 6,942,121.

15. Mossworld is a sophisticated company and has many years of experience applying for, obtaining, and maintaining patent rights. Mossworld also has extensive experience manufacturing products and either marking or not marking them with words or numbers indicating that such

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http://www.toysrus.com/product/index.jsp?productId=4413517

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products are protected by patents or pending applications.

16. Mossworld (including Mossworld's patent counsel) knew or should have known that the term of U.S. Patent Nos. 5,377,877, 5,339,995, 5,409,144, 5,439,143 and 6,942,121 expired no later than their expiration dates.

17. Mossworld is no longer paying maintenance fees to the United States Patent and Trademark Office to maintain U.S. Patent Nos. 5,377,877, 5,339,995, 5,409,144, 5,439,143 and 6,942,121.

18. Mossworld knew or should have known that U.S. Patent Nos. 5,377,877, 5,339,995, 5,409,144, 5,439,143 and 6,942,121 had already expired at the same time Mossworld was marking and advertising products with U.S. Patent Nos. 5,377,877, 5,339,995, 5,409,144, 5,439,143 and 6,942,121.

19. Mossworld knows, or reasonably should know, that U.S. Patent Nos. 5,377,877, 5,339,995, 5,409,144, 5,439,143 and 6,942,121 do not protect the Accused Product, or any products whatsoever.

20. Mossworld could have no reasonable belief that it was proper to mark and advertise products with the numbers of the expired U.S. Patent Nos. 5,377,877, 5,339,995, 5,409,144, 5,439,143 and 6,942,121, and the false marking was done with intent to deceive the public by, including, but not limited to, misusing its patent rights to extend the term of its patents and inhibiting competition.

21. For at least the reasons set forth herein, Mossworld has wrongfully and illegally advertised patent rights which it does not possess, and, as a result, has likely benefited in at least maintaining its market share in the marketplace.

22. For at least the reasons set forth herein, Mossworld has wrongfully and illegally advertised patent rights which it does not possess, and, as a result, has likely caused the retail price of its Accused Product to be inflated above normal market levels, and has caused the public to face inflated prices for its products.

23. The public deception, and/or competitive harm caused by each of Mossworld's false markings has and continues to harm the United States and the public, including relator SF Tech, a

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representative of the public incurring the cost and time associated with this enforcement.

Demand For Judgment

SF Tech demands judgment against Mossworld, as follows:

1. A declaration that Mossworld violated 35 U.S.C. § 292.
2. An accounting of the number, sales, and revenue of any falsely marked articles not presented at trial.
3. A civil fine of $500 for each offense — half paid to the U.S., and half paid to SF Tech.
4. Costs, including attorney fees.
5. A finding that this is an exceptional case.
6. Any other relief the court deems appropriate.

Demand For Jury Trial

SF Tech demands a jury trial on all issues so triable.

Date: November 18, 2010

Mount & Stoelker, P.C.,
/s/ Dan Fingerman
Counsel for San Francisco Technology Inc.

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